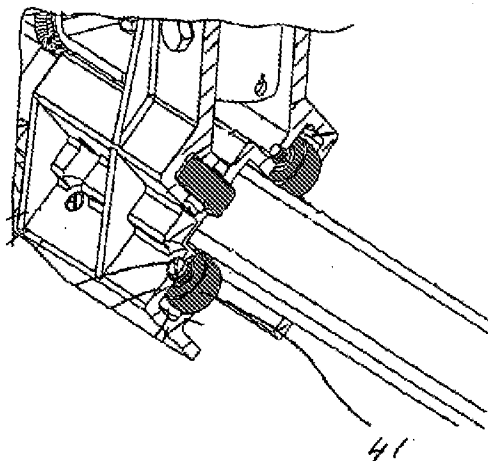


### **REMARKS**

Applicants respectfully traverse and request reconsideration. Claims 36–39 have been cancelled. Claims 51 and 52 have also been cancelled and the dependency of dependant claims 54–57 has been amended to depend from claim 53 now presented in independent format including the claimed subject matter of claims 51 and 52.

### **Rejections Under § 112**

Claims 50 and 60 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner argues the figures and specification do not teach a base having wheels on the inner surface. Applicants respectfully disagree and direct the Examiner to element 41 found in FIG. 15 (reproduced below with other numbering removed and wheels colored).



**FIG. 15 of 10/530,862**

The wheels is also described at para. [0070] of the specification, published as U.S. Pat. Pub. No. 2007/0084666 A1. Therefore, the rejection is improper and should be withdrawn. Such action is solicited.

## Rejections Under § 102(b)

Claims 1, 2, 5–7, 17, 18, 21–25, 28–30, 36–41, 44–46, and 50 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Davis. Claims 1, 2, 8, 9, 17, 18, 24, 25, 36, 40, 41, 51, 52, 54, and 55 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Ablad.

Anticipation can only be established by a single prior art reference that discloses each and every element of the claimed invention. *Structural Rubber Products Co., v. Park Rubber Co.*, 749 F.2d 7070; 233 U.S.P.Q. 1264 (C.A.F.C. 1984). The test for anticipation requires that all of the claimed elements must be found in exactly the same situation and united in the same way to perform the same function in a single unit of the prior art. *Studiengesellschaft Kohle, G.m.b.H. v. Dart Industries, Inc.*, 762 F.2d 724, 726 220 U.S.P.Q. 841 at 842 (C.A.F.C. 1984).

### A. U.S. Pat. No. 1,395,559 (“Davis”)

Claims 1, 2, 5–7, 17, 18, 21–25, 28–30, 36–41, 44–46, and 50 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Davis. Davis discloses a rail-based scooter 1 where two U-shaped wheels 2 are used instead of normal wheels for moving the scooter over a railroad track. As with any scooter, the body is collapsible into a closed position (FIG. 7) for transportation. The scooter does not have a motor, and a small foot-activated brake pad is used to control the speed of the device by the user. This technology is unrelated to Applicants’ device as the claimed device is for a support assembly for a vehicle, not a scooter.

#### *No Roof Mountable Guide Is Shown in Davis (Claims 1, 2, and 5–7)*

While this unrelated/nonanalogous reference cannot be relied upon for obviousness rejections, the Examiner may rely on nonanalogous art for a rejection under Section 102 as long as it discloses every limitation recited in the claims. MPEP § 2131.05. Claim 1, for example, includes as a first limitation a portion that is omitted from the Examiner’s *prima facie* case: “... a guide that is mountable on said roof ....” The reference teaches a rail, and rails are disposed on

the ground for the transportation of freight and passengers. The rail in Davis is simply not a guide that can be mounted on a roof of any structure. This is understandable as the Davis device has no useful purpose on roof structures.

The Davis reference provides clearly that “This invention relates to carriages designed to be used upon railroad rails and is especially adapted for the rapid transportation of railroad flagmen and other operatives who are required to traverse the line or railroad” (see p. 1, ll. 9–14). For Davis to anticipate, all of the claimed elements, including “a guide that is mountable on said roof,” must be found in Davis in exactly the same situation and united in the same way to perform the same function as the Davis scooter. Davis disclose a rail, not a guide mountable on a roof. Therefore, this reference is not anticipatory and the rejection must be withdrawn as to claims 1–7.

*No Elevated Support Surface Guide Is Shown in Davis (Claims 24–25, 46, and 50)*

Claims 24 and 46 are directed to a structure mountable on the elevated support surface. As described above, Davis does not disclose or teach any guide capable of being found on an elevated support surface. Therefore, the reference is not anticipatory and the rejection must be withdrawn as to claims 24–30 and 46–50.

*Davis Does Not Include a Clap on a Harness for Securing a Person (Claims 36–39)*

Claim 36 is directed to a support structure having “... a link for attaching a clamp on a harness for securing a person wearing the harness to the support assembly.” The Examiner directs Applicants to a clamping means at 22 operating with wheels 20 on the Davis device. These side wheels are used to stabilize the Davis carriage on the rail much like training wheels are used by children on bicycles. This description can be found at p. 2, ll. 58–65 of the specification. Davis does not describe a link for attaching a clamp on a harness. Therefore,

claim 36 and dependant claims 37–39 are novel over the cited art, the reference is not anticipatory, and the rejection must be withdrawn as to claims 36–39.

*Intermediate Attitudes Are Added to Distinguish over Davis*

Several of the claims rejected as being anticipated by Davis include a portion directed to a lock for selectively locking said support structure in a desired attitude relative to said base. The Examiner is silent as to what portion of the described structure is associated with this limitation but identifies a “lock” as the different portions of the folding mechanism of Davis. Davis is a structure where the folding mechanism places the handle in the vertical position (use) and horizontal position (storage). There are no intermediate attitudes contemplated in this device. In contrast, para. [0081] of Applicants’ specification provides the following:

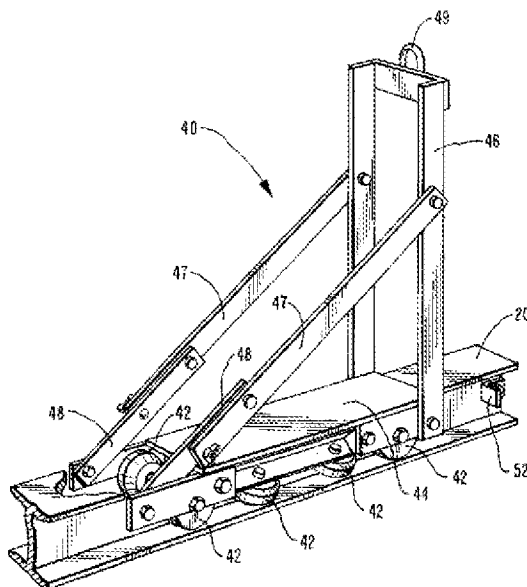
When the locking pin 74 moves from an engaged position to a disengaged position, the post 51 is free to move between a first, or generally upstanding attitude, and a second, or generally horizontal attitude, said first and second positions corresponding to notches 49a and 49d respectively. The notches 49b and 49c correspond to attitudes of inclination approximately 60 degrees and to 30 degrees to the horizontal.

Intermediate attitudes are shown and enabled between the first and second positions using notches 49b and 49c. The Davis structure does not provide for the placement of the handle at any intermediate attitude between the use and the storage positions. Therefore, Applicants have amended the claims to read, “... a lock for selectively locking said support structure in ~~a desired~~ an intermediate attitude relative to the base at an inclination between a generally upstanding attitude and a generally horizontal attitude.”

Applicants have also amended independent claims 1, 8, 17, 24, 32, 40, and 46 to include this limitation and associated language. No new matter is added by way of this change as the subject matter is clearly described in para. [0081] of the specification. By way of these amendments, claims 1, 2, 5–7, 17, 18, 21–25, 28–30, 41, 44–46, and 50 are now in condition of allowance and these rejections must be withdrawn.

**B. U.S. Pat. No. 5,537,9339 (“Ablad”)**

Claims 1, 2, 8, 9, 17, 18, 24, 25, 36, 40, 41, 51, 52, 54, and 55 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Ablad. In a single-sentence rejection, the Examiner rejects all claims based on the structure shown in FIG. 6 of this reference (reproduced below).



**FIG. 6 of Ablad**

Fig. 6 of Ablad is a moveable trolley engaged on segmented rail structures. A rail is placed on the top of a train and the structure is then slid along the rail until it reaches end stops. As with the Davis structure, bars are used with butterfly screws to collapse the vertical portion onto the body for storage between uses. A holder 49 is used to clip in and provide support to a person wearing a harness.

This structure has only a vertical position (use) and a horizontal position (storage). As explained above, Applicants have amended independent claims 1, 8, 17, 24, 32, 40, and 46 to include a limitation associated with intermediate positions of the system. No new matter is added by way of these amendments as the subject matter is clearly described in para. [0081] of the specification. By way of these amendments, claims 1, 8, 17, 24, 40, and 46 and their

associated dependent claims are now in condition of allowance and these rejections must be withdrawn.

*Claims 36–39 and 51–52 are Cancelled*

In light of the Examiner's arguments, claims 36–39 and 51–52 have been cancelled. The dependent claims have been amended to reflect this change.

*Ablad Teaches Only an I-Shaped Rail Beam (Claims 54–60)*

Claims 51 and 52 have been cancelled. Claims 54–60 have been amended to depend from claim 53 directed to a guide having a generally square transverse cross-section. The Examiner did not reject claim 54 under an obviousness argument but as anticipatory. For the rejection to be maintained, each element and limitation must be shown in the anticipatory reference. Ablad discloses an I-shaped beam or a normal rail. The device in Ablad cannot function without the space in the I-beam to place the wheels. Applicants' device differs greatly. These claims are not anticipated by Ablad and the rejection must be withdrawn. The use of a square tube results in a completely different system.

**Rejections Under § 103(a)**

By way of the amendments associated with the anticipatory references described above, independent claims 1, 8, 17, 24, 32, 40, 46, and 53 have been shown to be novel over the cited references. Claims depending therefrom are also novel and are not anticipated for the same reasons. Claims 1–14, 17–30, 40–50, and 54–60 are therefore in condition of allowance.

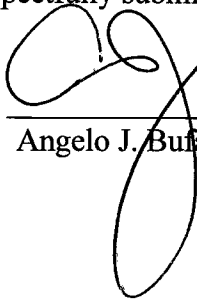
Of the remaining pending claims (claims 32–35), Applicants have amended claim 32 to include intermediate attitude positions. Therefore, claims 32–35 are also allowable for the reasons provided above.

It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable

consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to call the undersigned if such action might expedite the prosecution of this application.

Respectfully submitted,

Date: March 1, 2010

By:   
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